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France's action against maritime piracy and the Contact Group on Piracy off the Coast of Somalia (CGPCS) : interests, interactions and priorities.

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Abstract

France is an active participant in the Contact Group and in its working groups. Since 2009, the French state attempts to draw attention to the situation in Somalia, arguing the destabilization of Somalia directly threatens the European and international security. As EU member state, France calls for responsibility and respect of international legal norms. Within the framework of the Common Security and Defence Policy, France plays a key role in promoting notably the coordination between civilian and military actors of the maritime surveillance.

This paper addresses issues about the contribution of France within the different CGPCS working groups: attendance, discussions or even necessary impetus protecting various international, European and national interests. The role of France has to be appreciated regarding the EU presidency of the Contact Group. The interaction between the work of the CGPCS and other mechanisms, as for example the SHADE, INTERPOL, the Indian Ocean Commission or the Trust fund to support the initiatives of States countering piracy off the coast of Somalia, must be considered as well.

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Introduction²

The very concept of piracy has evolved over the years. From Homer's epic poems³ until its codification in the 20th century⁴, the definition of acts of piracy has always been influenced by national and international diplomacy and economics. Even though pirates are generally described as *hostis humanis generis*, there has been a time when piracy was not a crime as such, when lawful and unlawful pirates did effectively coexist⁵.

Nowadays, since the creation of competent international organisations and its resurgence in the 70's, piracy became a major security issue. It is important to remember that legal international standards can only emerge when the interests of a large number of States coincide⁶. Piracy constitutes a perfect exemple, especially while the United Nations worked on the law of the sea from 1973 to 1982⁷.

Acts of piracy are now defined by art. 101 of the 1982 Montego Bay Convention on the Law of the Sea (UNCLOS). They give rise to a universal competence for the States. A State which carried out the seizure and persons having taken control of the ship may decide upon the penalties to be imposed (UNCLOS, art. 105 to 107). Such a legal mechanism should lead to an effective fight against piracy. Nevertheless, its enforcement takes place on an expressly voluntary basis of the States. Its effective application depends thus on the existence of places of discussions, negotiations, cooperation and coordination of national strategies and means of action.

Many national naval actions have been taken place over the past decade, to protect and prevent acts of piracy against merchant ships transiting through waters off the Horn of Africa. Different instruments are now playing a key role in deterring acts of piracy. The number of national and regional naval forces and initiatives demonstrates the great importance attached by both States and Non-Governmental Agencies to the containment of the phenomenon : the action of national navies, the European union (EU) operation Atalanta, the US CTF-151, the creation of the Shared Awareness and Deconfliction (SHADE) but also the work of the IMB

² The views expressed in this paper do not necessarily reflect the views or policy of the interviewed experts. We express our gratitude in particular to Her Excellency Ambassador Véronique Roger-Lacan, Special Representative for the Fight against Maritime Piracy, Mrs Lisa Plesse and Mrs. Louise Cadin, French Ministry of Foreign Affairs, for their comments, support and time.

³ Power J., *Maritime Terrorism: A New Challenge for National and International Security*, 10 Barry Law Review, 2008, 112

⁴ Tuerk H. *Reflections on The Contemporary Law of the Sea*, Leiden-Boston, Martinus Nijhoff Publishers, 2012, 72

⁵ Gaurier D., « The Pirate's Path: Becoming the Enemy of All Mankind », in Norchi Ch. H., Proutière-Maulion G., *Piracy in comparative perspectives : Problems, Strategies, Law*, Paris-Londres, Pedone-Hart, 2012, 25-40

⁶ Ladreit de Lacharrière G., *La politique juridique extérieure*, Paris, IFRI, 1983, 286 p.

⁷ Houry C., *La piraterie maritime au regard du droit international. Incertitudes et évolutions contemporaines*, Paris, L'Harmattan, 2014, 260 p.

Piracy Reporting Centre, the creation of the Internationally Recommended Transit Corridor (IRTC), the Best Management Practices (BMPs), the Djibouti Code of Conduct *etc*⁸... The most prominent feature of the fight against piracy, as it is conducted today, appears to be the operational capacity of the concerned and involved States, inter-governmental and international organisations.

The Contact Group on Piracy off the Coast of Somalia (CGPCS) could be seen only as a forum of discussions among others, facilitating the coordination of counter-piracy activities in the region. Nevertheless, its independence has to be noted : « *one positive feature of the CGPCS is that it is not a UN contact group, which allows it to act independently « and do things that a UN contact group would not be able to do in terms of bureaucracy and procedure »* »⁹. The Contact Group is indeed part of an international political process on maritime piracy, presenting particular characteristics.

The fight against piracy includes a set of political wills and operational measures dedicated to the protection of national, international, economic and security interests. France's external action falls within different frameworks, discussed in political and diplomatic forums, including the CGPCS. Hence, France's contribution to the Contact Group can only be appreciated with regard to other national initiatives, consistent with the EU Common Security and Defence Policy.

France and the establishment of the CGPCS

The contemporary counter-piracy mechanisms originally emerged at a state level. Coping with an alarming resurgence of acts of piracy in 2007, France was one of the first states that volunteered to provide military ships to ensure the safety of the World Food Program (WFP) in Somalia. To this end, operation ALCYON was launched, to accompany the vulnerable humanitarian ships. This operation is conducted primarily by France, and then relayed by Denmark, the Netherlands and Canada.

Considering the positive results of the French operation, the Security Council of the United Nations (UNSC) adopted Resolution 1814 (2008) about the situation in Somalia, reiterating its support for the contribution made by some States to protect the WFP maritime convoys. Subsequently, a series of Resolutions authorized operations within Somalia's territorial waters

⁸ For an overview of the different mechanisms : Kraska J., *Contemporary Maritime Piracy*, Santa Barbara, Praeger, 253 p.

⁹ Zach D. A., Conor Seyle D., Vestergaard Madsen J., *Burden-sharing Multi-level governance : A Study of the Contact Group on Piracy Off the Coast of Somalia*, One Earth Future and Oceans Beyond Piracy Report, 2013, 56 p., (Footnote 151 : Interview with James Hughes, February 22, 2013), [online] : http://oneearthfuture.org/sites/1earthfuture.org/files/documents/publications/BurdenSharingMulti-levelGovern_final.pdf

or even on its soil¹⁰. These latter encouraged and permitted the EU to establish a coordination unit in charge of supporting the surveillance and protection activities carried out by some Member States off the Somali coast (EU NAVCO), and then to launch operation ATALANTA initially dedicated to the protection of WFP vessels¹¹.

Pursuant to UN Security Council Resolution 1851 (2008), the CGPCS was established on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia. The statements of Resolution 1851 (2008) allow to assess the context of its creation. India initially approved and supported creation of the group¹², mentioning the necessity « *to institutionalize operational coordination among navies in the area, and to set up a mechanism, such as a contact group, for those involved in the anti-piracy effort* »¹³. Such an outlook was not universally shared. For its part, France supported « *a phased United Nations involvement [that] could be deployed that first focused on political progress* » and described at first the efforts made towards the creation of a coordination mechanism, without specifically mentioning the Contact Group¹⁴.

As any Contact Group, the CGPCS aims at promoting discussions at a political and diplomatic level to resolve a crisis. France supports this primary task that contributes not only to fight maritime piracy but also to rebuild an effective Somali State. This needs « *a clear political strategy. After a 20-year vacuum of political power, there was a need for new institutions that represented the country* »¹⁵. The French contribution¹⁶ to the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia¹⁷ demonstrates a strong will to encourage a jurisdictional response to the offshore phenomenon and its onshore origins.

¹⁰ Guilfoyle D., « Counter-Piracy Law Enforcement and Human Rights », *International and Comparative Law Quarterly*, vol. 59, Issue 1, January 2010, pp. 141-169

¹¹ Leboeuf C., « Operation ATALANTA », in Norchi Ch. H., Proutière-Maulion G., *Piracy in comparative perspectives... op. cit.*, pp. 225-248

¹² Kraska J., *Contemporary Maritime Piracy*, op. cit., p. 160

¹³ UN Doc. SC/9541, 6046th meeting, December 16, 2008

¹⁴ *Ibid.*

¹⁵ UN Doc. SC/10792, 6848th meeting, October 16, 2012 ; See also, UN Doc. SC/10648, 6770th meeting, May 15, 2012

¹⁶ Details available at : <http://mptf.undp.org/factsheet/fund/APF00>

¹⁷ Trust Fund Terms of reference, approved by the 13th plenary of the CGPCS on 11 December 2012, 4-5 : « *The overall purpose of the Trust Fund is to help defray the expenses associated with prosecution of suspected pirates, as well as other activities related to implementing the Contact Group's objectives regarding combating piracy in all its aspects. [...] Specifically, the Trust Fund shall: expand the current possibilities available to both States and the private sector to make tangible contributions to combat piracy off the coast of Somalia; permit the payment of expenses associated with prosecution and detention of suspected pirates as soon as possible; provide for an expedited distribution mechanism to allow for the payment or reimbursement of short-term prosecution related expenses; and support relevant legal capacity-building activities* ».

As an international, *ad hoc* political forum, the CGPCS has a certain interest to somalize the solutions¹⁸. Given the existing instruments dedicated to operational cooperation and coordination of national naval means, it could be considered as a supplementary level of decision.

The need for international and regional coordination of naval operations. Questioning the CGPCS' added value.

Many naval actions are conducted in order to fight against piracy, both in protective and preventive ways. Three coalitions are conducting naval operations (EU, NATO, United States), in combination with actions of numerous States. This association of forces constitutes an *ad hoc* security scheme in the Indian Ocean. Nevertheless, naval operations of States remain conducted solely under national command, challenging the created forums' legitimacy¹⁹. As mentioned before, the coordination scheme raises both political and operational issues.

At the political level, France participates fully to the CGPCS debates, as EU member and contributor to the European naval forces (EUNAVFOR-ATALANTA). In 2012, we noted some difficulties raising from the political cooperation of the naval actions²⁰, notably within the Shared Awareness and Deconfliction (SHADE)²¹. The CGPCS might be seen as a complementary solution to overstep political issues. The CGPCS different meetings and the current studies about the future of the five working groups demonstrate a truly prospective and political reflection on a regional undertaking of the fight against piracy.

An increased participation of the coastal states and the reinforcement of their police capacities represent one of the major recurring objectives. Since 2010, France is actively engaged in this process, notably through the project MARSIC, directed by *France Expertise Internationale* (European Commission financial support). This project supports the set up of a Regional Training Centre in Djibouti and of Information Sharing Centres in Mombasa, Dar-es-Salam et Sanaa. These different centres are part of the 21 regional States ongoing commitments embedded in the Djibouti Code of Conduct (January 2009). France supports the implementation of this Code that constitutes an effective tool to promote initiatives in the Indian ocean. The European Union Mission on Regional Maritime Capacity-Building in the

¹⁸ Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, Annex to the letter dated 24 January 2011 from the Secretary-General to the President of the Security Council, UNSC S/2011/30, January 25, 2011, 79

¹⁹ Roger-Lacan V., « Lutter contre la piraterie, facteur structurant de sécurité en océan indien? », *Hérodote*, n° 145, 2012/2, pp. 118-128

²⁰ Leboeuf C., « Operation ATALANTA »..., *op. cit.*

²¹ See Guilfoyle D., *Modern Piracy: Legal Challenges and Responses*, Cheltenham, Edward Elgar Publishing, 2013, 53

Horn of Africa (EUCAP Nestor), launched on January 11, 2013²² contributes also to a regionalization of the maritime security. The French State supports the performance of this mission, whose actual Head, Etienne de Poncins, was formerly Ambassador of France in Nairobi.

At the operational level, most of the coordination is performed through existing bodies expressively dedicated to this task. The CGPCS Working Group 1 was initially dedicated the coordination of naval operations but focused later on capacity building. One can argue that its primarily mission could supplement or even challenge the work of the SHADE, since this body is designed to effectively promote and enhance information sharing between all the concerned actors. Even if it has been launched in December 2008 by the Combined Maritime Forces, the SHADE is not designed to be a joint operation mechanism.

The French State appears to be considering the SHADE as a sufficient coordination body, where military, civilian, non-governmental organisations and shipping representatives are present. Moreover the SHADE offers access to a military communications system called MERCURY (real-time sharing of information on situation), which is largely depoliticized²³. However, the politicisation of the SHADE²⁴ and the eventual loss of control and command of the national forces constitute the principal arguments in favor of a supplementary body of tactical discussions, such as the CGPCS.

The following point of view helps to put all in perspective :

« Over time, WG1 and SHADE would mutually influence each other's development²⁵. As Hopkins²⁶ explained, SHADE « became the center of gravity for naval coordination, because it needed less political support over time. » « One of the great successes of the whole contact group, » she

²² Political and Security Committee Decision, on the establishment of the Committee of Contributors for the European Union Mission on Regional Maritime Capacity-Building in the Horn of Africa (EUCAP NESTOR), 2013/41/CFSP, January 11, 2013 ; See EMA, « Piraterie : Formation des garde-côtes djiboutiens », May 7, 2013, [online] : <http://www.defense.gouv.fr/operations/actualites/piraterie-formation-des-garde-cotes-djiboutiens>

²³ Bueger C., «CounterPiracy, Communities of Practice and New Security Alignments», Journal of Regional Security, Issue 1, 2013, pp. 49-62

²⁴ Experts quoted in Helly D., "Lessons from ATALANTA and EU counter-piracy policies", EU Institute for Security Studies, Seminar Reports, Paris, 23-24 March 2011 / Brussels, 17 June 2011, p. 11 : "we make sure we don't raise discussions at the political level, otherwise it stops to talk. [...] there is the "impression of a beauty contest between the EU, NATO and CMF" It is the fourth time NATO and the EU simultaneously deploy forces in the same area and with the same mandate [...] From an outsider's point of view, EU-NATO competition on piracy has grown and is a matter of concern for the industry. The EU and NATO also compete for media coverage and visibility and it was underlined that "while success is not shared, failure is"".

²⁵ Authors' footnote : Interview with Chris Holtby, January 28, 2013

²⁶ Donna Hopkins, US counter-piracy and maritime security coordinator

remarked, « was how it politically supported the development and evolution of the SHADE mechanism for operational coordination²⁷. »²⁸

Those interactions have to be recognised as a major driver of overall cohesion. States participate to political discussions, regardless of whether they are members of a joint naval force, thus helping to overstep some of the aforementioned political and diplomatic issues. Interactions between the SHADE and the CGPCS are basically needed to move from military coordination to political action in order to restore the rule of law in Somalia²⁹.

The CGPCS as a political relay for promotion of French and European priorities

The first operations initiated by France, then followed by the ATALANTA operation, reveal a strong commitment to secure the waters off the Horn of Africa. The pioneering role of France in this field has shown the very interest of the permanent pre-positioning of the French military means in this particular region³⁰, where the risks related to the strategic interests are particularly high³¹. That commitment remains valid ; according to the 2013 French White Paper on Defence and National Security, « *the current rebalancing of the US military towards the Asia-Pacific region is [...] an important factor for France's commitment as a sovereign power and a player in the security of the Indian Ocean and the Pacific* »³².

This statement is fully shared by the EU : the region should be stabilized not only because of the risks to energy and resources supply, but also to achieve lasting peace, security and justice, good governance based on the democratic principles of inclusion, the rule of law and respect for human rights³³. The recently approved EU maritime security strategy³⁴, based on a comprehensive approach, faithfully transpose these two dimensions. As Chairman of the CGPCS, the EU clearly affirms its will to assume international responsibility in the Horn of Africa. The EU Presidency priorities have been rapidly defined : 'Zero/zero', (zero ships and zero seafarers in the hands of Somali pirates) ; Document the CGPCS Lessons Learned ; Refine

²⁷ Authors' footnote : Interview with Donna Hopkins, November 8, 2012

²⁸ Zach D. A., Conor Seyle D., Vestergaard Madsen J., *Burden-sharing Multi-level governance...*, *op. cit.*, p. 21

²⁹ Proutière-Maulion G., « Les enjeux de la sécurisation du transport maritime au service de l'action extérieure de l'Union européenne », *Annuaire de Droit Maritime et Océanique*, 2015 (to be published). Conference, *international Symposium « La piraterie de la mer au cyberspace »*, Univ. Nantes, 5-6 June 2014

³⁰ Valin G., « La lutte contre la piraterie au large de la Somalie », *EchoGéo*, n°10, nov. 2009, 8 p.

³¹ See Mallet J.-Cl., *Livre blanc sur la Défense et la Sécurité nationale (volume 1)*, Paris, Odile Jacob - La documentation française, June 2008, 350 p.

³² *White Paper on Defence and National Security*, 2013, p. 29, [online] : http://www.livreblancdefenseetsecurite.gouv.fr/pdf/the_white_paper_defence_2013.pdf

³³ EU Council, *Conclusions on the Horn of Africa*, 3124th Foreign Affairs Council meeting, Brussels, 14 November 2011

³⁴ EU Council, Press release « EU maritime security strategy approved », Luxembourg, 24 June 2014, 11177/14 PRESSE 356

and optimize the structures and working procedures of the CGPCS to make the Contact Group as relevant, efficient and cost-effective as possible and increase the regional involvement in the CGPCS.

The very creditably EU objective to refine and optimize the structures of the CGPCS may appear as a mere formal change. Some other measures need to be set or at least more strongly addressed as for example the arrest of pirate instigators/chiefs. The arrest of Mohammed Abdi Hassan (AKA Afweyneh or Big Mouth) should give incentive to States to cooperate in this direction. But this would lead to political issues, as those that raised from the arrest of the aforementioned pirate chief. This latter was indeed traveling with a Somali diplomatic passport and involved in counter-piracy activities on behalf of the Transitional Federal Government³⁵.

Even if some valuable UN reports or studies suggest to solve the problem of piracy notably by building and strengthen the prison capacity of the regional states, one of a most highly priority should today be the arrest of pirate networks leaders. « *This requires inevitably intelligence gathering, strategic analysis, effective investigation, prosecution and police cooperation* »³⁶. To achieve this objective, political discussions are essential to move beyond practical and recurrent identified issues (lack of sufficient evidence or information sharing mechanisms for example)³⁷. France financially supports regional projects dedicated to that particular issue. From the INTERPOL EVEXI (2011-2012) and EVEXI II (2013-...) projects emerges a series of standardized procedures for interviewing captured pirates and released hostages, gathering legally admissible physical and testimonial evidence, and sharing of intelligence to support existing and future investigations and prosecutions³⁸. The creation of a special unit in 2012 and of a regional joint investigation team in November 2013³⁹ constitute a solid framework to this end⁴⁰, already implemented, that is more than enough according to the French state. In

³⁵ Letter dated 27 June 2012 from the members of the Monitoring Group on Somalia and Eritrea addressed to the Chairman of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, 50, [online] : http://www.somaliareport.com/downloads/UN_REPORT_2012.pdf (released by the BBC News, [online] : <http://www.bbc.com/news/world-europe-24519520>

³⁶ Interview with V. Roger-Lacan, Special Representative for Anti-Maritime Piracy, Ministry of Foreign Affairs, France, 21 July 2014

³⁷ Council of Europe, European Committee on Crime Problems, *Sea Piracy (Background working paper)*, Strasbourg, 24 September 2012, cdpc/docs 2012/cdpc (2012) 11 - e

³⁸ INTERPOL, « INTERPOL anti-piracy meeting reviews key evidence against network leaders », Media release, 21 March 2014

³⁹ INTERPOL, « INTERPOL anti-piracy meeting targets network leaders with new regional Joint Investigation Team », Media release, 4 November 2013

⁴⁰ Gottlieb Y., « Combating Maritime Piracy: Inter-Disciplinary Cooperation and Information Sharing », Forthcoming in *47 Case Western Journal of International Law*, 2014

even broader terms, this is part of the construction of global governance⁴¹, whose one of the first steps is the set-up of a common information sharing for effective judicial procedures.

Conclusion

As a highly concerned state by the piracy phenomenon, France demonstrates a real capacity to effectively contribute to the existing mechanisms, including the CGPCS. Part of the overall system of fight against piracy, the CGPCS offers an additional possibility to coordinate efforts for states that desire not be part of the existing multinational forces. As member of those forces, France participates actively to the existing dedicated bodies or institutions. The SHADE or INTERPOL's actions comply with the requirements of the necessary *continuum* between operations, judicial treatment, governance, security and development⁴², as the current UN initiatives⁴³.

Nevertheless, the fight against piracy is a playground, where both national and international interests are at stakes⁴⁴. First of all, states consider the protection of their nationals as a duty. Besides the protection of their nationals, it does exist a responsibility to protect to insure an « *optimum public order of the oceans* »⁴⁵, through the sharing of burdens and responsibilities.

The study of the current counter-piracy mechanisms shows also that the national actions are the exercise of a sovereign will, pursuing benefits of an increased international exposure. At the institutional level, this reveals some gaps to be filled, notably within the CGPCS:

- the lack of collaboration and coordination between the national institutions of the regional states and;
- the lack of cooperation between the state which are not integrated in the cooperation and the coordination of the naval actions.

⁴¹ Struett M. J., Carlson J. D., Nance M. T., *Maritime Piracy and the Construction of Global Governance*, New York - London, Routledge, 2013, 226 p.

⁴² « Entretien avec Jocelyne Caballero » (former French special representative for the international coordination of the fight against piracy ; about the aforementioned UN Jack Lang's report), *Partenaires Sécurité Défense*, n° 267, Fall 2011, p. 13

⁴³ Proutière-Maulion G., Lecture on *Multilateral diplomacy and cooperation between USA, Russia and EU : the example of the fight against piracy*, Annual Conference on Cultural Diplomacy, Berlin, 2013 : « *Under the leadership of the UN Political Office for Somalia (UNPOS), the UN Office of Drugs and Crime (UNODC), the UN Development Programme (UNDP), and the IMO, several actions to end pirate impunity have been initiated: tightening domestic laws in several countries, improving prosecution systems, and stepping-up detention capacity* ».

⁴⁴ Audebaud N., *La lutte internationale contre la piraterie somalienne : représentations et enjeux*, Roland M. (dir.), Mémoire de master 2 de recherche Etudes africaines, Université Paris 1 Panthéon-Sorbonne, 2010, 314 p.

⁴⁵ Norchi C. H., « Piracy and the Public Order of the Oceans », in Norchi Ch. H., Proutière-Maulion G., *Piracy in comparative perspectives... op. cit.*, pp. 425-446

For France, the Indian Ocean Commission (IOC) appears to be a necessary body to enhance the participation of regional states. It « *has continuously put greater emphasis on the enhancement of regional cooperation particularly at the strengthening of the legal framework for dealing with various maritime threats in the region* »⁴⁶. IOC is now co-chairing the CGPCS Working Group 1 on Capacity Building. Its expertise and previous actions would be of a significant interest especially for preparation of the much-anticipated paper on key priorities and capabilities (end of 2016), which might lead to the recognition of the *Somalisation* of the solutions.

Finally it seems necessary to highlight the necessity to refocus the current means to combat maritime piracy and promote a preventive way. « *In a really near future, the focus should be on the search and prosecution of pirate networks leaders* »⁴⁷, which is the fundamental basis to the continued search for a lasting solution to a phenomenon that endangered national, regional and international security.

⁴⁶ Belle J., « The Legal Process: The Indian Ocean Commission's Effort to Promote Regional Harmonization of Laws against Piracy », Institute for Near East and Gulf Military Analysis (INEGMA) on behalf of the second United Arab Emirates Counter Piracy Conference, Dubai, June 2012

⁴⁷ Interview with V. Roger-Lacan, Special Representative for Anti-Maritime Piracy, Ministry of Foreign Affairs, France, 21 July 2014